

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

DYLAN BRANDT, *et al.*,

PLAINTIFFS,

v.

No. 4:21-CV-00450-JM

LESLIE RUTLEDGE, *et al.*,

DEFENDANTS.

DEFENDANTS' PRETRIAL DISCLOSURES

Defendants, through counsel, for their pretrial disclosures pursuant to Local Rule 26.2 and this Court's Amended Final Scheduling Order (Doc. 99), hereby state as follows:

1. The identity of the party submitting information:

Defendants, Leslie Rutledge, in her official capacity as the Arkansas Attorney General, Amy Embry, in her official capacity as the Executive Director of the Arkansas State Medical Board, and Sylvia D. Simon, Robert Breving Jr., Veryl D. Hodges, John H. Scribner, Elizabeth Anderson, Rhys L. Branman, Edward "Ward" Gardner, Rodney Griffin, Betty Guhman, Brian T. Hyatt, Timothy C. Paden, Don R. Phillips, William L. Rutledge, and David L. Staggs, in their official capacities as members of the Arkansas State Medical Board, by and through counsel.

2. The names, addresses and telephone numbers of all counsel for the party:

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3. A brief summary of claims and relief sought:

The Arkansas General Assembly introduced the Save Adolescents from Experimentation (SAFE) Act during the 2021 session, which passed as HB 1570 and was later enacted as Act 626. The SAFE Act was later codified at Ark. Code Ann. § 20-9-1501 et seq. Plaintiffs brought suit on May 25, 2021, challenging the SAFE Act, alleging three causes of action against Defendants: (1) the SAFE Act violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; (2) the SAFE Act violates the right to parental autonomy under the Due Process Clause of the Fourteenth Amendment; and (3) the SAFE Act violates the First Amendment's guarantee of freedom of speech.

Defendants previously filed a Motion to Dismiss, and Brief in Support, as well as Response to Plaintiffs' Motion for Preliminary Injunction, all of which Defendants incorporate herein by reference as if repeated word for word pursuant to Rule 10(c) of the Federal Rules of Civil Procedure. Plaintiffs seek to have the Court declare the SAFE Act unconstitutional and Defendants, consistent with all pleadings they have filed in this case, contend that the SAFE Act does not violate the United States Constitution.

4. Prospects for settlement:

There is no prospect for settlement.

5. The basis for jurisdiction or objections to jurisdiction:

Plaintiffs fail to invoke the subject-matter jurisdiction of this Court. (Doc. 73). First, Plaintiffs lack standing to challenge the SAFE Act. Second, Plaintiffs' claims against the Defendants are barred by the United States Constitution, including the Eleventh Amendment.

6. A list of pending motions:

Plaintiffs have filed motions to disqualify the individuals Defendants have identified as expert witnesses, Dr. Patrick Lappert and Dr. Mark Regenerus. Defendants timely filed a Response thereto, with the motions currently pending before the Court.

Defendants have filed motions objecting to Plaintiffs' deposition designations of Amy Embry and Dr. Rhys Branman, with Plaintiffs having filed responses thereto. The motions are currently pending before the Court.¹

7. A concise summary of facts:

Four minor Plaintiffs, along with and through their six respective parents, as well as two physician Plaintiffs on behalf of their patients, challenge the SAFE Act. The SAFE Act was approved by the Arkansas General Assembly on April 6, 2021, with an effective date of July 28, 2021. The Plaintiffs named as Defendants the Attorney General of the State of Arkansas, Leslie Rutledge, as well as the Director and members of the Arkansas State Medical Board, all in their official capacities.

Plaintiffs alleged that each of the four minors are transgender. *See* Compl., ¶¶ 9–12. They alleged that two of the minors were “currently receiving” treatments prohibited by the SAFE Act. Compl. ¶¶ 9–10. Plaintiffs alleged the third minor had not yet begun puberty, but intended to “begin receiving” treatments prohibited by the SAFE Act. Compl. ¶ 11. Plaintiffs also alleged that, beginning in March 2021, the fourth minor was to “begin receiving” treatments prohibited by the SAFE Act. Compl. ¶ 12. Regarding the two physician Plaintiffs, Plaintiffs alleged that they each provide “gender-affirming” treatments prohibited by the SAFE Act. Compl. ¶¶ 13–14.

8. All proposed stipulations:

Defendants will stipulate to facts admitted to in their Answer, except any facts that constitute inadmissible evidence.

9. Issues of fact expected to be contested:

All issues of fact relating to Plaintiffs' claims are expected to be contested.

¹ By agreement of the parties, Plaintiffs submitted their deposition designations of Representative Robin Lundstrum on July 26, 2022, and Defendants submitted their counter-designations on August 2, 2022. Any objections to deposition designations of Rep. Robin Lundstrum are due August 9, 2022, after the date of these Pretrial Disclosures. In the event Defendants file a motion objecting to Rep. Lundstrum's deposition designations, said motion would likewise be pending before the Court.

10. Issues of law expected to be contested:

All issues of law are expected to be contested, including those contained in the Defendants' Brief in Opposition to Plaintiffs' Motion for a Preliminary Injunction, as well as its Motion to Dismiss, Brief in Support, and Reply in Support of the Motion to Dismiss, which are incorporated by reference herein as if repeated word for word pursuant to Rule 10(c) of the Federal Rules of Civil Procedure.

11. A list and brief description of all exhibits, documents, charts, graphs, models, schematic diagrams, summaries, and similar objects which may be used in opening statement, closing argument, or any part of the trial, other than solely for impeachment purposes, whether or not they will be offered in evidence. Separately designate those documents and exhibits that the party expects to offer and those which the party may offer.

Defendants expect to offer the following exhibits:

- Defendants' expert witness reports and rebuttal reports;
- American Psychiatric Association – The Diagnostic and Statistical Manual of Mental Disorders (5th ed.);
- World Professional Association for Transgender Health – Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (7th version);
- S. Paige Hertweck & Maggie L. Dwiggin – Clinical Protocols in Pediatric and Adolescent Gynecology (2nd ed.);
- United States Centers for Medicare & Medicaid Services – Final Decision Memorandum on Gender Reassignment Surgery for Medicare Beneficiaries with Gender Dysphoria; dated August 30, 2016;
- Sweden, The National Board of Health and Welfare – Care of children and adolescents with gender dysphoria, dated March 2022;
- United Kingdom, National Institute for Health and Care Excellence – Evidence review: Gender-affirming hormones or children and adolescents with gender dysphoria, dated October 2020;
- United Kingdom, National Institute for Health and Care Excellence – Evidence review: Gonadotrophin releasing hormone analogues for children and adolescents with gender dysphoria, dated October 2020;

- United Kingdom, The Cass Review – Independent review of gender identity services for children and young people: Interim report, dated February 2022;
- United Kingdom, The Cass Review – Independent Review of Gender Identity Services for Children and Young People, dated July 19, 2022;
- Finland, PALCO/COHERE (Council for Choices in Healthcare in Finland) – Recommendations by the Board for Selection of Choices for Health Care in Finland, translation dated May 18, 2022;
- The Royal Australian & New Zealand College of Psychiatrists – Recognizing and addressing the mental health needs of people experiencing Gender Dysphoria/Gender Incongruence, dated August 2021;
- French National Academy of Medicine – Medicine and gender transidentity in children and adolescents;
- American Academy of Pediatrics – Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents, dated October 4, 2018;
- American Academy of Pediatrics – Risk of pseudotumor cerebri added to labeling for gonadotropin-releasing hormone agonists, from the Food and Drug Administration, dated July 1, 2022;
- American Psychological Association – Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, dated December 2015;
- Endocrine Society – Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, dated September 13, 2017;
- The Journal of Sexual Medicine – Age is Just a Number: WPATH-Affiliated Surgeons’ Experiences and Attitudes Toward Vaginoplasty in Transgender Females Under 18 Years of Age in the United States, dated February 11, 2017;
- Any deposition exhibits introduced during depositions conducted by Defendants;
- Any document produced or identified during discovery by any party or nonparty.

Defendants may offer the following exhibits:

- Any document attached to a pleading or motion in this case by any party or nonparty;
- Any deposition exhibits introduced during depositions conducted by Plaintiffs;
- Any exhibit identified or offered by plaintiffs or a nonparty; and
- Any exhibit needed for rebuttal or impeachment.

12. **The names, addresses, and telephone numbers of witnesses for the Defendant, separately identifying witnesses whom the Defendant expects to present and those whom the Defendant may call. Designation of witnesses whose testimony is expected to be presented via deposition and, if not taken stenographically, a transcript of the pertinent portion of the deposition testimony.**

Defendants expect to call the following witnesses:

- A. Dr. Kathryn Stambough;
- B. Dr. Michele Hutchison;
- C. Dr. Paul Hruz;
- D. Dr. Stephen Levine;
- E. Dr. Mark Regnerus;
- F. Dr. Patrick Lappert;
- G. Dr. Roger Hiatt;
- H. Billy Burleigh;
- I. Laura Perry ;
- J. Dr. Stephanie Ho;
- K. Cathy Campbell;
- L. Dr. Janet Cathey.

Defendants may call the following witnesses:

- A. Any person identified as a witness by Plaintiffs;

- B. Any other person deposed by any party;
- C. Any person identified by the parties in discovery;
- D. Any witness named by the plaintiffs in their pretrial disclosures; and
- E. Rebuttal witnesses (if applicable).

13. **The current status of discovery, a precise statement of the remaining discovery, and an estimate of the time required to complete discovery.**

- Discovery closed on May 26, 2022. (Doc. 99).

14. **An estimate of the length of trial and suggestions for expediting disposition of the action.**

The Court has set a bench trial for the week of October 17, 2022. (Doc. 99). The parties estimate that trial will last approximately ten days.

Dated: August 8, 2022

Respectfully Submitted,

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